IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1540

GLENN M. GREENWALD, *Petitioner,*

v.

THE CITY OF NORTH MIAMI BEACH, FLORIDA and
THE UNITED STATES DEPARTMENT OF LABOR,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

✓ JOEL D. JOSEPH
1712 Eye Street, N.W.
Suite 1010
Washington, D.C. 20006
(202) 338-5560
Attorney for Petitioner

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

TABLE OF CONTENTS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. _____

GLENN M. GREENWALD, *Petitioner,*

v.

THE CITY OF NORTH MIAMI BEACH, FLORIDA and THE UNITED STATES DEPARTMENT OF LABOR, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, formerly a chemist for City of North Miami Beach Public Utilities Department, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on January 12, 1979.

OPINIONS BELOW

The Opinion *Per Curiam* of the United States Court of Appeals for the Fifth Circuit, has been reported at

587 F.2d 779 (1979) and is reproduced as Appendix A. The Memorandum Decision of the Secretary of Labor is reproduced as Appendix B. The Recommended Findings of Fact, Conclusion of Law and Order of the Administrative Law Judge is reproduced as Appendix C.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on January 12, 1979, and this petition for certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTION PRESENTED

Whether the petitioner filed his complaint under the Safe Drinking Water Act is a timely manner.

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 300j-9: Discrimination prohibition; filing of complaint; investigation; orders of Secretary; notice and hearing; settlements; attorneys' fees; judicial review; filing of petition; procedural requirements; stay of orders; exclusivenes of remedy; civil actions for enforcement of orders; appropriate relief; expedition of proceedings; mandamus proceedings; prohibition inapplicable to undirected but deliberate violations.

(i)(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this subchapter or a proceeding for

the administration or enforcement of drinking water regulations or underground injection control programs of a State.

(B) testified or is about to testify in any such proceeding, or

(C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this subchapter.

(2)(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(B)(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within 90 days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or denying the complaint.

An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of Title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(4) Whenever a person has failed to comply with an order issued under paragraph (2)(B), the Secretary shall file a civil action in the United States District Court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages. Civil actions filed under this paragraph shall be heard and decided expeditiously.

(5) Any nondiscretionary duty imposed by this section is enforceable in mandamus proceeding brought under section 1361 of Title 28.

(6) Paragraph (1) shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this subchapter. July 1, 1944, c. 373, Title XIV, § 1450, as added Dec. 16, 1974, Pub.L. 93-523, § 2(a), 88 Stat. 1691.

STATEMENT OF THE CASE

This case arises under the Safe Drinking Water Act (Pub.L. 93-523, 88 Stat. 1660 *et seq.*, 42 U.S.C. Section 300f *et seq.*), hereinafter called SDWA or the Act. Glenn M. Greenwald filed a complaint with the United States Department of Labor on December 20, 1977, alleging that he was discharged from his position as chemist for the City of North Miami Beach, Public Utilities Department, in violation of Section 1450(i) of

the Act (42 U.S.C. Section 300j-9(i)). App. 10a. A hearing was held in Fort Lauderdale, Florida, before Administrative Law Judge Samuel A. Chaitovitz on February 21 and 22, 1978. Judge Chaitovitz issued a recommended decision, dated March 15, 1978, which concluded that the discharge of Mr. Greenwald constituted a violation of the Act, but recommended that the complaint be dismissed, finding that it was not timely filed. App. 10a. On April 3, 1978, the Secretary of Labor rendered a decision affirming the finding of Judge Chaitovitz that the complaint was not timely filed, and the complaint was dismissed.

Petitioner filed a timely petition for review with the United States Court of Appeals for the Fifth Circuit invoking the jurisdiction of the court pursuant to 42 U.S.C. Section 300j-9(i)(3)(A). On January 12, 1979 the Court of Appeals affirmed the decision of the Secretary of Labor and dismissed the petition for review. 587 F.2d 779, App. 1a, *et seq.*

Glenn M. Greenwald was employed in November of 1976 by the City of North Miami Beach to serve as chemist for the Public Utilities Department, a civil service position. Upon completion of his six-month probationary period with the City in May of 1977, his superiors, Messrs. Van Loon and Estok, recommended that he be awarded a permanent position, a merit increase, and that he be elevated to civil service status, all based upon his performance and abilities as chemist. App. 11a. On August 28, 1977, Mr. Greenwald, while taking routine samples of water at a household in North Miami Beach, noticed certain irregularities in the quality of the water and, upon further testing, discovered the presence of a substantial amount of coliform bacteria. Mr. Greenwald requested a routine

nighttime flushing of the area, but no flushing took place that night. App. 12a. On August 24, 1977, Mr. Greenwald told his superiors of his findings and of his intuitive suspicions, and he recommended a daytime flushing of the area to prevent any potential harm to the residents of the household. Mr. Van Loon, the department head, citing his trust in Mr. Greenwald's judgment, ordered that the daytime flushing take place. App. 13a. The flushing revealed the presence of unusually heavy amounts of thick black sludge. App. 13a. His immediate supervisor, Mr. Estok, became incensed when he learned that a daytime flushing was being conducted in an affluent area of the city. App. 13a. On August 24, 1977, Mr. Greenwald was told by Mr. Van Loon and Mr. Estok that they did not feel the daytime flushing was justified and that Mr. Greenwald should consider resigning. App. 14a. Meanwhile, samples taken on August 24 revealed on August 25, 1977, the presence of at least eleven large coliform colonies and other abnormal circumstances affecting the water at the suspect household. App. 14a. While taking further tests at the house on August 25, 1977, a resident of the suspect household inquired as to whether there was a problem with the water, to which Mr. Greenwald responded that there had in fact been some problems and that the residents of the household should not use the water until they were notified that the problem no longer existed. App. 15a.

On August 25, 1977, Mr. Greenwald told his superiors that he would not resign, as he felt he was doing a good job, and his suspicions about the water had been confirmed. App. 15a. Mr. Greenwald was then told that he was fired, and on August 26, 1977, he received a com-

munication from the city manager informing him of his termination. App. 16a. On September 1, 1977, Mr. Greenwald appealed the attempted discharge to the Civil Service Board and requested that a hearing be held within 15 days. App. 25a. The Civil Service Board is required to hold a hearing on an employee appeal within 15 days from the taking of an appeal. Article XIII, Section 79, Appeals, of the North Miami Beach Charter, App. 16a. The Civil Service Board failed to hold a hearing within the required 15-day period. The Board later held a hearing and voted on December 1, 1977 to uphold the city manager's action. Mr. Greenwald filed his complaint under the Safe Drinking Water Act with the Secretary of Labor on December 20, 1977. App. 16a.

REASONS FOR GRANTING THE WRIT

I. The Question of Whether the Action of a Government Employee in Seeking Review by a State Civil Service Board with Respect to His Being Improperly Discharged Tolls the Requirement for Filing a Complaint Under the Safe Drinking Water Act Has Not Been, But Should Be, Decided by This Court.

This is a case of first impression. The Safe Drinking Water Act was signed into law on December 16, 1974. Mr. Greenwald filed the first complaint with the Secretary of Labor under that Act three years later.

A writ of certiorari should be granted because the question presented is important and will be recurring. Complaints have been filed and will continue to be filed under the SDWA and under related provisions of the Federal Water Pollution Control Act, 33 U.S.C. Section 1367. See *Carl W. Rady,* Case No. WPCA-3, opinion of the Secretary of Labor, August 26, 1977, App. 27a.[1]

The employee protection provisions of Safe Drinking Water Act and the Water Pollution Control Act are important because they help to ensure that water quality will be improved and that water pollution control employees are encouraged to protect the nation's health and welfare.[2] Mr. Greenwald, and other chemists and scientists, must be protected in their efforts to safeguard our drinking water quality. Furthermore, Mr. Greenwald did not sit on his rights: he immediately filed an appeal of his "discharge" with the Civil Service Board.

The Civil Service Board, although required to hold a hearing within 15 days, failed to do so. Had the Civil Service Board held a hearing within 15 days and promptly decided Mr. Greenwald could have filed in a timely manner with the Secretary of Labor under the Safe Drinking Water Act. App. 16a.

A leading commentator stated:

> Probably the most common and perhaps the most justifiable of the exceptions to the running of statutes of limitations are based upon acts of the defendant which have impeded suit.
>
> Note Developments—Statutes of Limitations, 63 Harv. L. Rev. 1178, 1220 (1950).

The Civil Service Board is a part of the City of North Miami Beach, respondent herein. The City of North Miami Beach should not benefit from its illegal delay.

---

[1] The Department of Labor's Office of Public Affairs confirmed that, as of April 2, 1979, six complaints have been filed under the SDWA and ten complaints have been filed under employee protection provisions of the Water Pollution Control Act.

[2] Cf. 29 U.S.C. § 660(c) and 30 U.S.C. § 815(c) (1978 Supp.).

This Court should grant review of this case because the question presented is important and recurring and to correct the grave inequities that have occurred to petitioner.

II. The Decision of the United States Court of Appeals for the Fifth Circuit Is in Conflict With Applicable Decisions of This Court.

The decision of the Court of Appeals is in conflict with this court's decision in *Burnett* v. *New York Central Railroad Co.*, 380 U.S. 424 (1965).

Burnett was brought under the Federal Employers' Liability Act. Mr. Burnett filed a timely action in state court. The defendant moved to dismiss the case for improper venue. The state court action was dismissed because venue was improper. While the state case was pending the statute of limitations expired. More than three years after the cause of action had arose Mr. Burnett refiled his action in federal court. The Supreme Court ruled that the filing in state court had tolled the limitation provision.

The facts in the instant case are analagous. Mr. Greenwald filed a timely appeal of his discharge with the Civil Service Board of North Miami Beach, Florida. While his appeal was pending the 30-day statute of limitations under the Safe Drinking Water Act expired. The question presented is whether the SDWA statute of limitations is tolled by an administrative appeal of an employee's discharge.

The court in *Burnett* stated that the basic inquiry is whether the congressional purpose is effectuated by tolling the statute of limitations under the given circumstances. 380 U.S. at 427. The court concluded that the Federal Employers' Liability Act was a humane

and remedial act and that the congressional purpose behind the act would be effectuated by tolling the statute of limitations during the pendency of a state claim.

The Safe Drinking Water Act was passed to safeguard public health by improving the quality of drinking water. HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, SAFE DRINKING WATER ACT, H.R. Rep. No. 93-1185, 93d Cong. 2d Sess. (July 10, 1974). See *Environmental Defense Fund* v. *Costle*, 578 F2d 337, 343 (D.C. Cir., 1978). The legislative history does not shed any light on the congressional intent behind the employee protection provisions of the Act, Section 1450(i). That section prohibits discrimination against an employee who commenced an action under the Act, testified in a related proceeding or assisted in carrying out the purposes of the Act. Section 1450(i) was included in the Act as a safeguard to expend protection to employees of water systems who are discriminated against because of their concern to carry out the important goals of the Act. Administrative Law Judge Chaitovitz found Glenn Greenwald to be such an employee, and found that the City did, in fact, discriminate against him in violation of Section 1450(i).

Congress passed the Safe Drinking Water Act:

> to assure that the public is provided with safe drinking water . . . .
>
> The purpose of the legislation is to assure that water supply systems serving the public meet minimum national standards for the protection of public health.
>
> * * *
>
> The Committee has concluded that the present legislative authority is inadequate to assure that the water supplied to the public is safe to drink.
>
> * * *

> (T)he public has not been made adequately aware of the potential danger to health to which it is exposed from drinking contaminated or inadequately treated water. This in turn has resulted in a lack of demand for public and private action to correct and prevent the public health threat in drinking water.

HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, SAFE DRINKING WATER ACT, H.R. Rep. No. 93-1185, 93d Cong. 2d Sess. 1, 3, 6 (July 10, 1974).

Mr. Greenwald was discharged for carrying out the intent of Congress. Surely Congress, intending to increase public awareness of drinking water hazards and to improve drinking water quality, could not have intended an employee who actively contested a wrongful discharge to be without a remedy.

The court in *Burnett* stated:

> Statutes of limitations are primarily designed to assure fairness to defendants. Such statutes 'promote justice by preventing surprises through revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitations and that the right to be free of stale claims in time comes to prevail over the right to prosecute them.' *Order of Railroad Telegraphers* v. *Railway Express Agency, Inc.* 321 U.S. 342, 348-349. Moreover, the courts ought to be relieved of the burden of trying stale claims when a plaintiff has slept on his rights.

380 U.S. at 428.

In the instant case a tolling of the statute of limitations would not be unfair to defendant. Within six

days after he was illegally told that he was discharged petitioner filed an appeal with the Civil Service Board putting defendants on notice that he was challenging the dismissal. App. 25a. Petitioner's claim is not stale, memories have not had a chance to fade and no witnesses have disappeared. Testimony taken before the administrative law judge in February, 1978 has been preserved. Petitioner did not sleep on his rights.

The thirty-day statute of limitations at issue is particularly short. The court should be liberal in its construction of a short statute of limitations as compared to a three-year limitations period. Courts often caution litigants to exhaust their administrative remedies before seeking judicial relief. *Aircraft & Diesel Corp.* v. *Hirsch,* 331 U.S. 752, 767 (1947). See earlier position of Department of Labor in this case, App. 21a. By denying a writ of certiorari this court will be encouraging a multiplicity of actions and adding to the numbers of cases in the federal courts and agencies.

III. There Is a Conflict Between Decisions of the Circuit Courts.

There is a conflict between the decision of the Fifth Circuit in this case and the decision of the Tenth Circuit in *Dartt* v. *Shell Oil Company,* 539 F.2d 1256 (1976), *affirmed by an equally divided court,* 434 U.S. 99, *rehearing denied,* 434 U.S. 1042 (1977).

Although the *Dartt* case was concerned with the Age Discrimination in Employment Act, 29 U.S.C. Sections 621, *et seq.* (ADEA), both *Dartt* and the petitioner herein were required by statute to file a complaint or given notice of intent to sue to the Secretary of Labor.

The trial court in *Dartt* dismissed the complaint for failure to file her notice of intent to sue within the 180

day period specified in the statute. 539 F.2d at 1258. The Court of Appeals reversed, stating:

> after examining the cases and the legislative history, we remain unconvinced that Congress intended the failure to file notice within the 180-day notice period to be an absolute bar to bringing an ADEA private action.

539 F.2d at 1259.

The Court considered the two basic purposes behind the 180-day notice requirement to be:

> (1) To provide the Labor Department with an opportunity to achieve a conciliation of the complaint while the complaint is still fresh, and (2) to give early notice to the employer of a possible lawsuit, the latter promoting both the preservation of evidence and good faith negotiating on the part of the employer during the conciliation period.
>
> 539 F.2d at 1261.

The Tenth Circuit found that both of these purposes were fulfilled in *Dartt* and therefore ruled that the failure to file a notice with the Secretary of Labor did not bar suit. As in the *Dartt* case petitioner gave respondent City of North Miami Beach early notification of his allegations of wrongful discharge. The Labor Department was provided with an opportunity to achieve a conciliation of the complaint before and during the actual hearing held before an administrative law judge of the Department. App. 21a.

The intent of Congress in enacting complaint provisions of the Safe Drinking Water Act was similar to its intent concerning the notice requirement under the ADEA. Since petitioner provided early notification to

the respondent by pursuing his rights under the Civil Service procedures, the City of North Miami Beach would not be prejudiced by a tolling of the statute of limitations. The Labor Department was also not prejudiced by any delay of petitioner, especially considering that the Department initially agreed with petitioner's contentions that his filing was timely. App. 21a.

CONCLUSION

The Court in *Dartt* concluded its opinion with a sentence that is equally applicable to this case:

> This is not a case of a plaintiff sleeping on her rights nor a defendant any way being prejudiced thereby either presumptively or in fact.
>
> 359 F.2d at 1262.

For all of these reasons, granting the petition for a writ of certiorari would further the interests of justice.

Respectfully submitted,

JOEL D. JOSEPH
1712 Eye Street, N.W.
Suite 1010
Washington, D.C. 20006
(202) 338-5560

Attorney for Petitioner

APPENDIX

APPENDIX A

GLENN M. GREENWALD, *Petitioner,*

v.

The CITY OF NORTH MIAMI BEACH, FLORIDA, and the United States Department of Labor, Respondents.

No. 78-1945

Summary Calendar.

UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

January 12, 1979

City employee who was discharged petitioned for review of action of Secretary of Labor in dismissing his complaint alleging that the had been discharged in violation of the Safe Drinking Water Act. The Court of Appeals held that city employee's complaint which was filed 115 days after alleged improper discharge although only 20 days after local civil service board upheld employee's termination was untimely.

Petition dismissed.

1. Labor Relations

City employee's complaint alleging a discharge in violation of Safe Drinking Water Act, which complaint was filed with Secretary of Labor 115 days after alleged improper discharge although only 20 days after local civil service board upheld employee's termination, was untimely. Safe Drinking Water Act, §§ 1401-1450, 1450(i)(1, 2), 42 U.S.C.A. §§ 300f to 300j-9, 300j-9(i)(1, 2); Safe Drinking Water Amendments of 1977, § 11(b), 42 U.S.C.A. § 300j-10.

2. Labor Relations

Safe Drinking Water Act does not require exhaustion of state or local remedies prior to filing of complaint with the

Secretary of Labor. Safe Drinking Water Act, §§ 1401-1450, 1450(i)(1, 2), 42 U.S.C.A. §§ 300f to 300j-9, 300j-9(i)(1, 2); Safe Drinking Water Amendments of 1977, § 11(b), 42 U.S.C.A. § 300j-10.

3. Labor Relations

Remedy provided by Safe Drinking Water Act is entirely independent of any local remedies. Safe Drinking Water Act, §§ 1401-1450, 1450(i)(1, 2), 42 U.S.C.A. §§ 300f to 300j-9, 300j-9(i)(1, 2); Safe Drinking Water Amendments of 1977, § 11(b), 42 U.S.C.A. § 300j-10.

4. Labor Relations

Fact that city employee allegedly discharged in violation of Safe Drinking Water Act sought local civil service board review of his discharge did not toll 30-day time limitation for filing claim under Act with Secretary of Labor. Safe Drinking Water Act, §§ 1401-1450, 1450(i)(1, 2), 42 U.S.C.A. §§ 300f to 300j-9, 300j-9(i)(1, 2); Safe Drinking Water Amendments of 1977, § 11(b), 42 U.S.C.A. § 300j-10.

Leopold & Leopold, Karen Leopold, Maurice Rosen, North Miami Beach, Fla., for petitioner.

Carin A. Clauss, Sol. of Labor, U.S. Dept. of Labor, Barbara A. Babcock, Asst. Atty. Gen., Michael F. Hertz, Thomas G. Wilson, Attys., App. Section, Civil Div., Dept. of Justice, Washington, D.C., Howard B. Lenard, Deputy City Aty., Sidney B. Shapiro, City Atty., N. Mami Beach, Fla., for respondents.

Petition for Review of a Decision of the Secretary of Labor Under the Safe Drinking Water Act.

Before BROWN, *Chief Judge,* COLEMAN and VANCE, *Circuit Judges.*

PER CURIAM.

The crucial issue in this case is whether or not the petitioner, Glenn M. Greenwald, timely filed his complaint with reference to his discharge as an employee of the City of North Miami Beach, in which he alleged that he had been discharged in violation of the Safe Drinking Water Act (the Act), 42 U.S.C. §§ 300f to 300j-10.[1]

The Administrative Law Judge held that the complaint had not been filed within the time required by law. The Secretary of Labor agreed and dismissed the complaint. Mr. Greenwald petitioned this Court for review.

We agree with the findings of fact and conclusions of law of the Administrative Law Judge, as affirmed by the Secretary, and dismiss the petition for review.

The Act provides that any employee who believes that he has been discharged in violation of the Act may file a complaint with the Secretary of Labor within 30 days after the

---

[1] Section 1450(i) of the Act, 42 U.S.C. § 300j-9(i)(1) provides:

> No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—
>
> (A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this subchapter or a proceeding for the administration or enforcement of drinking water regulations or underground injection control programs of a State,
>
> (B) testified or is about to testify in any such proceeding, or
>
> (C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this subchapter.

violation occurs.[2] In this case, Mr. Greenwald was discharged on August 26, 1977, but did not file a complaint with the Secretary of Labor until 115 days later, on December

[2] 42 U.S.C. § 300j-9(i)(2) provides as follows:

(2)(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(B)(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this paragraph. Within 90 days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

21, 1977. To be sure, this was only 20 days after the local Civil Service Board upheld the action of the City Manager in terminating Greenwald's employment. But the Act does not require the exhaustion of state or local remedies prior to the filing of a complaint with the Secretary. Moreover, the remedy provided by the Act is entirely independent of any local remedies. Thus, the fact that Greenwald sought local Civil Srvice Board review of his discharge did not toll the 30-day time limitation for filing a claim under the Act. *See also International Union of Electrical, Radio & Machine Workers* v. *Robbins & Myers, Inc.*, 1976, 429 U.S. 229, 97 S.Ct. 441, 50 L.Ed.2d 427 (pursuit of collective bargaining grievance procedures does not toll running of the limitations period within which complaint of racial discrimination must be filed with the EEOC, as Title VII remedies are independent of other pre-existing remedies available to an aggrieved employee).

PETITION DISMISSED.

APPENDIX B

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR

CASE NO. 78-SDWA-1

GLENN M. GREENWALD

VS.

THE CITY OF NORTH MIAMI BEACH

Memorandum Decision of the Secretary

This is a proceeding under the Safe Drinking Water Act (88 Stat. 1660 *et seq.*, 42 U.S.C. § 300 f *et seq.*). Glenn M. Greenwald filed a complaint alleging that he was discharged in violation of Section 1450(i) of that Act (42 U.S.C. § 300j-9(i). A hearing was held before an Administrative Law Judge. Thereafter, the Judge issued a recommended decision, dated March 15, 1978, in which he recommended that the complaint be dismissed on the ground that it was not timely filed.

The Act provides that an employee who believes he has been discharged in violation thereof may file a complaint with the Secretary of Labor within 30 days after the violation occurs. Greenwald filed his complaint under the Act approximately four months after his discharge. The Judge held, in reliance on the decision of the Supreme Court in *International Union of Electrical, Radio, and Machine Workers, AFL-CIO* v. *Robbin and Myers, Inc.*, 97 S.Ct. 441 (1976), that the 30 day time limitation was not tolled or suspended while Greenwald appealed his discharge to the Civil Service Board of the City of North Miami Beach, since the remedy under the Safe Drinking Water Act provided a legally independent procedure which was equally available to him.

In my opinion, the Administrative Law Judge is correct in concluding that Mr. Greenwald's complaint was not timely filed. Insofar as the Judge's decision dated March 15, 1978, relates to this question, I adopt it as my own. See *Carl W. Rady,* Case No. WPCA-3, decision of the Secretary, August 26, 1977. Accordingly, the complaint of Glenn M. Greenwald is dismissed.

Dated at Washington, D.C.

this 3rd day of April, 1978.

/s/ RAY MARSHALL
Secretary of Labor

APPENDIX C

U.S. DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

Suite 700-1111 20th Street, N.W.
Washington, D.C. 20036

Case No. 78-SDWA-1

GLENN M. GREENWALD, *Complainant*

VS.

THE CITY OF NORTH MIAMI BEACH, *Defendant*

NORMAN L. LEOPOLD, Esquire
KAREN S. LEOPOLD, Esquire
Interama Building, Suite 115
16666 Northeast 19th Avenue
North Miami Baech, Florida 33162
For Complainant

MICHAEL F. ESTOK, Plant Supervisor
City of North Miami Beach
Department of Public Utilities
2080 N.E. 160th Street
North Miami Beach, Florida 33162

HERBERT CHERNOV, Director of Personnel
City of North Miami Beach
17011 N.E. 19th Avenue
Miami Beach, Florida
For Defendant

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge
Statement of Case

Recommended Findings of Fact, Conclusion of Law and Order

Statement of Case

This case arises under the Safe Drinking Water Act (Public Law 93-523; 88 Stat. 1660 *et seq.;* 42 U.S.C. 300F *et seq.*) hereafter called SDWA or the Act. Mr. Glenn M. Greenwald filed a complaint on December 20, 1977 alleging that he was discharged in violation of Section 1450(i) of the SDWA (§ 42 U.S.C. 300 J-9(i)). The Complaint contends that the violation was either (1) the result of two separate acts by the City, the first of which occurred on August 26, 1977, when Mr. Greenwald received notification from the city manager of his dismissal, and the second of which took place on December 1, 1977, when the Civil Service Board dismissed the Petitioner, or (2) the sole result of Mr. Greenwald being dismissed by the Civil Service Board on December 1, 1977, which act was a continuation of the process of the City and which act by the City was not final until the decision of the Board was made, at which time the Greenwald has exhausted his administrative remedies.

Pursuant to a Notice of Hearing issued February 13, 1978 a hearing was held before the undersigned on February 21 and 22, 1978 in Fort Lauderdale, Florida.

Both Mr. Greenwald and the City of North Miami Beach were represented at the hearing, were afforded full opportunity to be heard, to adduce evidence and to examine as well as cross-examine witnesses. Thereafter, briefs were filed with the undersigned which have been duly considered.[1]

Upon the entire record in this case, from my observation of the witnesses and their demeanor, and from all of the testimony and evidence adduced at the hearing, I make the following Recommended Findings of Fact, Conclusions of Law and Order.

---

[1] The brief filed on behalf of Mr. Greenwald was received on March 7, 1978.

Findings of Fact

1. Mr. Glenn Greenwald was employed by the City of North Miami Beach to serve in the position of chemist, a civil service position, for the public utilities department.

2. Mr. Glenn Greenwald served a six months' probationary period, after which time his superiors, Mssrs. Van Loon and Estok,[2] the director and plant supervisor respectively, recommended that Mr. Greenwald be awarded a permanent position, a merit increase, and that he be elevated to civil service status, all based upon his performance and abilities as chemist.

3. Part of Mr. Greenwald's responsibilities as chemist was to take routine samples of the city's water supply as it reached the consumer, to test those samples physically, chemically and biologically to ensure their consistent purity and potability, and to answer complaints by consumers of the city's water supply.

4. On Tuesday, August 23, 1977, Mr. Greenwald, in taking routine samples of water, discovered only a trace of free available chlorine at a residence located at 800 N.E. 182nd Terrace, North Miami Beach, Florida. Free available chlorine is an essential disinfectant required to be maintained in the public drinking water. A "trace is between zero and .05 parts per million. A "trace" is below the level usually available in the water system of North Miami Beach and was considered abnormal.

5. Upon further examination of the water at the suspect residence by Mr. Greenwald, he noted that the turbidity was excessively high, the taste was peculiar, and the color and odor were unusual.

---

[2] Mr. Estok was Mr. Greenwald's immediate supervisor.

6. Mr. Greenwald began to run more tests on the samples in his laboratory, including the test for coliform bacteria, which he later found to be present in the sample.[3]

7. On the evening of August 23, 1977, Mr. Greenwald requested a routine nighttime flushing of the immediate area surrounding the subject household, which flushing was never conducted. A flushing is a procedure whereby all the fire hydrants in a given or defined area are opened. This in effect flushes out all the old water, cleans out impurities and sediment and replaces the old water with new water.

8. On the morning of Wednesday, August 24, 1977, Mr. Greenwald discovered that the sample taken from the suspect household the day before yielded a positive coliform bacteria reading (+1).

9. Mr. Greenwald returned to 800 N.E. 182nd Terrace during the morning of August 24 and did some additional testing of the water and discerned the free chlorine was still only at the trace level and the combined or residual chlorine was at the .8 level, a relatively low count. He also took a sample to measure the coliform count. The results of this test would not be available until the next day, August 25th. Concerned by the presence of the coliform, coupled with results of tests showing only a tract of free available chlorine, high turbidity,[4] and abnormal taste odor and color.[5] Mr. Greenwald first looked for Mr. Estok,[6] and when he didn't find him Mr. Greenwald approached Mr. Van

---

[3] Coliform is a bacteria group that is usually used as an judicator of pollution.

[4] Mr. Greenwald did not measure the turbidity, but by observing the water concluded it was abnormally high.

[5] There was evidence of low chlorine in other homes in the area tested but they did not indicate positive coliform results.

[6] Mr. Estok was at another plant where he could have been reached by telephone.

Loon, the department head, and explained to Mr. Van Loon his findings and intuitive suspicions. Mr. Greenwald recommended that Mr. Van Loon permit a daytime flushing of the area in order to prevent any potential harm to the residents of that household.

10. Mr. Van Loon, citing his trust in Mr. Greenwald's judgment, ordered that the daytime flushing of the suspect area take place.

11. When Mr. Estok learned from Mr. Van Loon of the daytime flushing, he questioned the basis upon which the order was issued and proceeded to the area being flushed, seeking an explanation from Mr. Greenwald.

12. At the flushing site, Mr. Greenwald noted that the water being flushed contained unusual amounts of heavy black sludge.

13. Mr. Estok questioned the Petitioner at the flushing site as to why the latter had asked for the daytime flushing, and Mr. Greenwald repeated his reasoning and findings to Mr. Estok as he had done to Mr. Van Loon. Mr. Estok said that he was very disturbed that a daytime flushing had been ordered in an *affluent* area of the city.

14. A flushing, whether conducted during the day or at night, causes no harm. Flushings are routinely conducted, as they serve to cleanse the distribution lines and to ensure a potable water supply. The record fails to establish that the daytime flushing conducted on August 24, 1977, at Mr. Van Loon's direction, caused any harm to the area residents.

15. Mr. Estok is not a chemist and apparently did not run any independent tests of the water at 800 N.E. 182nd Terrace prior to the daytime flushing.

16. The recommendation by Mr. Greenwald to his department head to flush the suspect area during the day provoked Mr. Estok and Mr. Van Loon into ordering Mr. Greenwald to appear at a 3:00 meeting on August 24, 1977.

17. At the 3:00 meeting, Mr. Van Loon, Mr. Greenwald, and Mr. Estok were present. Mr. Van Loon and Mr. Estok advised Mr. Greenwald that they did not feel the daytime flushing was justified. Mr. Greenwald again stated the considerations that prompted him to request the daytime flushing. Mr. Van Loon advised Mr. Greenwald that if he could not follow order he should consider resigning. Mr. Greenwald asked a few times if he was being fired. Mr. Van Loon advised him that he was not being fired. Rather, Mr. Van Loon wanted to consider the matter further and would advise Mr. Greenwald the next day what action would be taken. They were to meet again at about 12:00 noon on August 25, 1977.

18. Also at this meeting of August 24, 1977, Mr. Greenwald told Mr. Van Loon to notify the health department of this problem and to notify the residents of the household that they should refrain from drinking the water until the problem was corrected.[7] Mr. Van Loon instructed him not to notify the residents of the household that there was a problem with their water.

19. The area surrounding 800 N.E. 182nd Terrace was flushed again during the night of August 24, 1977, at Mr. Estok's request.

20. On August 25, 1977, the results of a sample taken on August 24, 1977, at 800 N.E. 182nd Terrace indicated the presence of at least eleven large coliform colonies (+11). In addition, the other tests revealed abnormal circumstances affecting the water at that address. Mr. Greenwald was particularly concerned with the low level of free available chlorine, coupled with excessive turbidity and high PH.[8]

---

[7] It is not clear but apparently Mr. Van Loon and Mr. Estok though Mr. Greenwald had stated he had already told the residents that the water was unsafe.

[8] It is not clear exactly on which date the PH was tested. It was tested in the laboratory, not at the site.

Mr. Greenwald advised Mr. Estok of the (+11) coliform count and Mr. Estok told Mr. Greenwald to go back to the premises and perform further tests.

21. While Mr. Greenwald was running further tests at 800 N.E. 182nd Terrace, Franklin Cohen, a resident of that household, asked Mr. Greenwald why continued testing was necessary. Mr. Greenwald told Franklin Cohen that there had been some problems with the water, and that the Cohens should not use the water until they were informed that the problem no longer existed.

22. Mr. Greenwald attended the 12:00 meeting with Mr. Van Loon and Mr. Estok on August 25, 1977. Mr. Greenwald informed them that he enjoyed his job and would not resign, particularly because subsequent test results had confirmed his initial suspicions about the water at 800 N.E. 182nd Terrace, and because he felt that he had acted in a prudent manner.

23. Based upon the tests conducted by Mr. Greenwald and the results thereof, and upon the testimony of expert witnesses it is concluded that Mr. Greenwald acted prudently in advising his department head of the condition, in requesting a daytime flushing, and in informing the household residents of the potential health hazard.

24. Mr. Greenwald was then told that he was fired and that he should turn in all city property, after he told Mr. Van Loon that he had notified the Cohens of the water situation.

25. On the evening of August 25, 1977, the suspect area was flushed for a third time. It is not known at whose request or instructions.

26. The fact that the water may be unsafe at one isolated residence could be explained by a number of reasons, including a cross-connection with another source of water.

27. Mr. Greenwald received a notice of removal from the city manager of North Miami Beach, dated August 26, 1977.

28. Pursuant to civil service procedure, Mr. Greenwald filed for an appeal of such decision before the Civil Service Board. The Civil Service Board, on December 1, 1977, upheld the action of the city manager in discharging Mr. Greenwald.

Conclusions of Law

Section 1450(i)(2)(A) of the SDWA provides, in part that "Any employee who believes he has been discharged . . . . in violation of paragraph (1) may, within 30 days after such violation occurs, file a complaint with the Secretary of Labor . . ."

Mr. Greenwald filed his complaint with the Secretary of Labor on December 20, 1977 alleging in effect two incidents of discrimination, first the discharge on August 26, 1977 and secondly the December 1, action of the North Miami Beach Civil Service Board in affirming the August 26, 1977 discharge.

Article XIII, Section 79, Appeals, of the North Miami Beach Charter provides, in part:

"Pursuant to regulations of the Board, the City Manager may suspend, demote, or otherwise discipline any employee in the classified service . . . ."

> ". . . . Within thirty (30) days of such action, the employee may appeal the action of the City Manager, to the Civil Service Board, and a hearing shall be afforded by the Board within fifteen (15) days from the taking of the Appeal . . . ."
>
> Article VI, City Manager, Sec. 34 (3): "The City Manager shall be responsible for the proper administration of all affairs of the City . . . ."

> "(3) To remove employees in his discretion, except as otherwise provided in the establishment of a Civil Service for municipal personnel."

The City Manager, pursuant to the aforesaid provisions of the Charter, has exclusive authority to "hire and fire" employees of the City of North Miami Beach, not otherwise excluded from his jurisdiction by other provisions of the charter. Where the City Manager has disciplined and/or suspended an employee, the employee *may* appeal that determination to the Civil Service Board for review of the action taken by the City Manager.

In the matter of Glenn M. Greenwald, the City Manager exercised his right to terminate any city employee, and did so by terminating the employee. Mr. Greenwald chose to seek remedial action through the Civil Service Commission. The appeal hearing process was undertaken by the Board, and, after a coniderable period of time, the Board *found no legal justification* for interfering with the decision of the City Manager to terminate Greenwald.

In *International Union of Electrical Radio and Machine Workers, AFL-CIO* v. *Robbins and Myers, Inc.*, 97 S. Ct. 441 (1976) the Supreme Court held that the existence and utilization of collective bargaining grievance or arbitration procedures did not have the effect of deferring the effective date of the discrimination to the conclusion of the arbitration or grievance procedures. Rather the Court held that the statute of limitations started to run as of the date of fire because the alleged discriminatee was fired and stopped work, and stopped receiving pay and benefits as of the date she was fired.

Further the Court would not toll the 90 day statute of limitations period for filing a claim with the Equal Employment Opportunity Commission for the time utilized in the processing of the grievance because the two rights and remedies are totally independent and the pursuit of rights

under one set of procedures did prevent the hearing of rights under the other.

It would seem this reasoning would be equally applicable in the instant case. The rights of appeal through the city's civil service procedures are independent of the rights guaranteed by the SDWA. Although some distinction could be drawn between the effect of contractional appeals procedures and civil service appeals procedures, the Court cited as authority *Johnson* v. *Railway Express Agency,* 421 U.S. 454, 95 S. Ct. 171 (1975) which was a case where the Court reached the same conclusion where the two independent rights involved were both statutory.

In the subject case it is noted that Mr. Greenwald did not work after his discharge on August 25, 1978 and he received no pay or benefits for services performed after that date. Further the Civil Service rights exercised by Mr. Greenwald are independent of the rights created by the Act and they did not prevent Mr. Greenwald from filing a complaint under the SDWA. Accordingly, in light of *International Union of Electrical Radio and Machine Workers, AFL-CIO* v. *Robbins and Myers, Inc., supra,* I am constrained to conclude that Mr. Greenwald's complaint under the SDWA was untimely because it was filed more than 30 days after his August 26, 1978 discharge.[9]

In light of the foregoing it concluded that because Mr. Greenwald's complaint was not timely it should be dismissed.

---

[9] Mr. Greenwald also alleges that the action by the Civil Service Board in affirming his discharge constituted a separate violation of the SDWA. No evidence was introduced to support a conclusion that the Civil Service Board, in refusing to reinstate Mr. Greenwald or to set aside the action of the city manager, was in any way motivated by Mr. Greenwald's action in attempting to carry out the purposes of the SDWA. Accordingly, it is determined that the record is insufficient to conclude that the action of the Civil Service Board of North Miami Beach violated the SDWA.

In the event the Secretary of Labor should conclude that the complaint was, timely filed, it recommended that he further concluded that the discharge of Mr. Greenwald constituted a violation of Section 1450(i) 1(c) of the SDWA.

The purpose of Section 1450 of the Federal Safe Drinking Water Act is to assure the *public* that it is being provided with safe drinking water. The Act was passed in response to growing concern that the public has not been adequately aware of the potential danger to health to which it is exposed from drinking contaminated or inadequately treated water. This awareness has led to a demand for public and private action to correct and prevent the public health threat in drinking water. (Safe Drinking Water Act, House Report No. 93-1185, July 10, 1974).

Mr. Greenwald was discharged because, after noticing certain abnormalities in the water located at 800 N.E. 182nd Terrace, requested of his supervisor that the area water be flushed. The City, on the other hand, contends that the dismissal of Mr. Greenwald was the result of his advising the people who resided at the house in question that there were certain suspicions as to the quality of their water and that it would be best for them not to drink it until further tests could be taken, after being sufficiently instructed not to communicate with residents, as well as his recommending that a daytime flushing take place in that area.

In either event, the discharge of Mr. Greenwald would be a violation of the Act. As the testimony elicited the expert witnesses shows, Mr. Greenwald acted *prudently* throughout the entire incident, both in requesting of his supervisors that the area should be flushed and also, when realizing that his supervisors were refusing to notify the affected residents of possible contamination, in so notifying the residents at 800 N.E. 182nd Terrace.

Section 1450(i)(1) of the Safe Drinking Water Act provides that no employer may discharge *or otherwise discriminate* against any employee with respect to his compensa-

tion, terms, conditions or privileges of employment because such employee or any person acting pursuant to a request of such employee has:

> "(A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this title or a proceeding for the administration or enforcement of drinking water regulations or underground injection control programs of a State.
>
> (B) testified or is about to testify in any such proceeding, or
>
> (C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this title."

The act of the City in discharging Mr. Greenwald for requesting the flushing or for notifying the residents at that address is a violation of subsection (C) of Section 1450(i)(1). As the facts clearly establish, it was simply out of concern and regard for the public safety that Mr. Greenwald approached his supervisor, the department head, and told him of his findings and intuitive suspicions. To punish or discriminate against a chemist for recommending a procedure which, at worst, would be a precautionary step, would be to demand that all subordinates at all levels remain silent if so instructed until harm has occurred or is imminent.

Order

In light of all of the foregoing it is recommended that the Secretary of Labor dismiss the subject complaint of Mr. Glenn M. Greenwald because it was not timely filed.

/s/ SAMUEL A. CHAITOVITZ
Samuel A. Chaitovitz
Administrative Law Judge

Dated: March 15, 1978

Washington, D.C.

APPENDIX D

STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
Washington, D.C. 20210

Memorandum For: HUGH B. CAMPBELL
ARA Wage-Hour
Atlanta, Georgia

From: HERBERT J. COHEN
Assistant Administrator

Subject: Complaint Under the Safe Drinking Water Act

(Received January 3, 1978)

The attached correspondence from Mr. Glenn M. Greenwald alleges a violation of the SDWA (see FOH 52x) by the City of North Miami Beach, Florida. Under the SDWA the Secretary must within 30 days of the receipt of a complaint (December 20, 1977) complete an investigation and notify in writing the complainant and the respondent of the results of the investigation. Therefore the matter should be given the highest priority in scheduling.

The SDWA requires that the complaint be made within 30 days after the alleged violation occurs. We support Mr. Greenwald's position that the date of the decision of the Civil Service Review Board (December 1) should be applied and his complaint is timely. Also attached is a copy of our notification to the City of the filing of the complaint.

A conciliation may be attempted per FOH Section 52s20 if it appears feasible. If conciliation fails, a full fact-finding investigation shall be made. Upon completion of the fact-finding the CO will notify in writing the parties of his or her determination, i.e., either recommend to the complainant that the complaint be dropped or recommend to the employer that the complainant be made whole. If the parties

will not settle based on the CO's findings, they must be afforded an opportunity for a hearing on the record. You should advise the parties in writing of his right and require that a request for such hearing be received within 15 days. It should be made clear to the complainant that the role of WH and SOL is not to represent him/her in the hearing. If a hearing is requested you should advise the Administrator immediately so that arrangements can be made with an Administrative Law Judge. The CO's narrative will set forth the facts as developed. The CO's opinion and recommendations, if any, shall be included on a separate sheet of paper. After any hearing and based on the hearing and the CO's findings, a Secretary's Order will be issued either denying the application or requiring affirmative action to abate the violation. The Secretary's Order shall be issued within 90 days of the receipt of the complaint.

If anytime prior to a hearing the parties come to a mutually satisfactory agreement, the settlement will be put in writing and signed by both parties with copies to the parties, to the file and to the Administrator. The Administrator will recognize the agreement in writing to the parties and formally terminate Wage and Hour's participation in the matter. If it should happen that the parties neither settle nor request a hearing, the file shall be submitted to the NO/OFLS and an order will be issued based on the CO's report.

Attachments

APPENDIX E

CITY OF NORTH MIAMI BEACH, FLORIDA

17011 N. E. 19th Avenue, 33162

September 15, 1977

Mr. Glenn Greenwald
2464 N.E. 192 St.
N. Miami Beach, Fl. 33180

Dear Mr. Greenwald:

The Civil Service office is in receipt of your request for a hearing on appeal from your removal from the Civil Service. Pursuant to your request for a special meeting within fifteen (15) days, an attempt was made to obtain a quorum of the Civil Service Board, necessary to hold such a meeting. Unfortunately, a quorum was not available on any of the dates possible, between the date of your letter and the next regularly scheduled meeting of the Board, on October 6, 1977.

Accordingly, your request for a hearing will be scheduled as part of the New Business on the Agenda of the next regular meeting of the Civil Service Board on October 6, 1977.

If there are any documents or witnesses that you desire to be subpoenaed for this hearing, please contact the undersigned not later than Wednesday, September 28, 1977.

Yours sincerely,

/s/ HERBERT CHERNOV
Herbert Chernov
Personnel Director

HC:sw

APPENDIX F

September 1, 1977

(Received September 7, 1977)

Civil Service Board
City of North Miami Beach, FL
17011 N.E. 19 Ave.
N. Miami Beach, FL 33162

To Those Concerned:

Please consider this note as a formal request for appeal, before the Board, of the recent action taken against me by certain representatives of the City of North Miami Beach.

Further, I am requesting that this hearing be conducted within 15 days. Thank you.

Sincerely,

/s/ Glenn M. Greenwald
Glenn M. Greenwald
2464 N.E. 192 St.
N. Miami Bch., FL 33180

APPENDIX G

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
CASE NO. WPCA-3

In the Matter of

CARL W. RADY

Decision of the Secretary

This is a proceeding under Section 1367 of the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251, *et seq.*), hereinafter referred to as the Act. Section 1367 (33 U.S.C. § 1367) provides that no person shall fire or otherwise discriminate against an employee by reason of the fact that he has instituted a proceeding under the Act, or has testified or is about to testify in such a proceeding. Any employee who believes that he has been fired or discriminated against in violation of this provision may, within thirty days after such violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination.

On June 25, 1973, Carl W. Rady was discharged from his employment by the Division of Highways, Department of Transportation of the State of Wisconsin. He appealed his discharge to the Wisconsin Personnel Board, which found that he was fired for just cause and sustained his discharge in a decision dated June 29, 1974.[1] On July 25, 1974, over a year after he was fired, he requested the U.S. Department of Labor to review the matter, alleging a violation of Section 1367 of the Act.

The matter was referred to an Administrative Law Judge for a hearing and recommended decision. The State

---

[1] Rady appealed the Personnel Board's decision to the Circuit Court of the State of Wisconsin for Dane County, which affirmed the Board's decision on January 27, 1975.

of Wisconsin submitted a motion for dismissal of Rady's application for review, on the ground, among others, that he did not file it within the time prescribed in Section 1367. In a decision dated May 20, 1977, the Administrative Law Judge granted the motion and dismissed the application. In arriving at his decision, the Judge considered and rejected the argument that the limitation period provided in Section 1367 was suspended or tolled by Rady's pursuit of his remedy before the Wisconsin Personnel Board. The Judge relied upon the recent decision of the Supreme Court in *International U. of Elec. Workers* v. *Robbins & Myers*, —— U.S. —— (1976), 97 S. Ct. 441, in which the Court held that a similar statute of limitations contained in Title VII of the Civil Rights Act of 1964 was not tolled by grievance proceedings. The Court reasoned that the remedy afforded the aggrieved employee under the Civil Rights Act was legally independent from that afforded him through the grievance proceedings and the two remedies were equally available to the employee. The Administrative Law Judge concluded that the issue presented in the present case is essentially the same as that considered in the *Robbins & Myers* case, and that he was bound by the Supreme Court's decision therein.

It is my conclusion that the Administrative Law Judge's decision is correct, and I adopt it as my own. Accordingly, the application for review of Carl M. Rady is dismissed.

Dated at Washington, D.C.
this 26th day of August, 1977

/s/ RAY MARSHALL
Ray Marshall
Secretary of Labor

No. 78-1540

In the Supreme Court of the United States

OCTOBER TERM, 1978

GLENN M. GREENWALD, PETITIONER

v.

CITY OF NORTH MIAMI BEACH, FLORIDA, and UNITED STATES DEPARTMENT OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1540

GLENN M. GREENWALD, PETITIONER

v.

CITY OF NORTH MIAMI BEACH, FLORIDA, and
UNITED STATES DEPARTMENT OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNTIED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

Petitioner, who had been a chemist for the City of North Miami Beach, was fired on August 26, 1977 (Pet. App. 16a). At no time after August 25, 1977, did petitioner work for the City. Petitioner appealed the decision to the local Civil Service Board which, on December 1, 1977, upheld his dismissal (*ibid.*). On December 21, 1977, 117 days after being dismissed, petitioner filed with the Secretary of Labor a complaint alleging that his dismissal violated the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-9. The Secretary, following the recommendation of the Administrative Law Judge (Pet. App. 16a-20a), dismissed petitioner's complaint because it was not filed within 30 days, as 42 U.S.C. 300j-9(i)(2)(A) requires (Pet. App. 7a-8a). The

court of appeals agreed with the Secretary's position and dismissed the petition for review (587 F. 2d 779; Pet. App. 1a-5a). The decision is correct, and there is no reason for review by this Court.

Petitioner did not file his complaint with the Secretary of Labor until almost 117 days after he was fired. But 42 U.S.C. 300j-9(i)(2)(A) requires complaints to be filed within 30 days of the date of the alleged violation. The alleged violation was the dismissal itself. Petitioner could have filed a complaint immediately; no provision of the Act requires the exhaustion of state or local remedies. Because any state and federal remedies for the discharge are independent, petitioner's resort to a local remedy did not extend the time in which to seek the federal remedy.[1] *Electrical Workers* v. *Robbins & Myers, Inc.*, 429 U.S. 229 (1976).[2]

Petitioner's contention that this case conflicts with *Burnett* v. *New York Central R.R.*, 380 U.S. 424 (1965), is incorrect. *Burnett* held that a statute of limitations was tolled during the pendency of an identical action in state court. As the Court pointed out in *Robbins & Myers, supra*, 429 U.S. at 237-238, the two actions involved in *Burnett* were not "independent"; because they involved the same claim one had to wait for the other. Here,

[1]Petitioner's allegation that the local Civil Service Board did not hold a timely hearing is irrelevant.

[2]In *Robbins & Myers* a discharged employee immediately pursued internal grievance procedures. Eighty-four days after the company, acting under those procedures, had denied the grievance, but 108 days after the discharge, the employee filed a charge of racial discrimination with the EEOC. The Act on which the employee premised her complaint provided that complaints must be filed with the EEOC within 90 days. This Court rejected the employee's claim that pursuit of her grievance procedure tolled the time limitation within which to file her discrimination complaint with the EEOC.

however, the local Civil Service Board procedure and the federal remedy are entirely independent, and both could go forward to conclusion simultaneously without regard to the other proceeding.

Finally, contrary to petitioner's contention (Pet. 13-15), the present case is not in conflict with *Dartt* v. *Shell Oil Co.*, 539 F. 2d 1256 (10th Cir. 1976), aff'd by an equally divided Court, 434 U.S. 99 (1977). *Dartt* held that the requirement of giving the Secretary of Labor "notice of intent to sue" under the Age Discrimination in Employment Act is not "jurisdictional" but is more like a statute of limitations, which "should be interpreted as being subject to possible tolling and estoppel." 539 F. 2d at 1260-1261. But the assumption that the Safe Drinking Water Act's time limit can be tolled does not assist petitioner because here, just as in *Robbins & Myers*, tolling is inappropriate.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JUNE 1979

DOJ-1979-06

in the

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1540

GLENN M. GREENWALD,
Petitioner,

vs.

THE CITY OF
NORTH MIAMI BEACH, FLORIDA and
THE UNITED STATES
DEPARTMENT OF LABOR,
Respondents.

Petition For A Writ of Certiorari To The United States Court Of Appeals For The Fifth Circuit

---

RESPONDENT CITY OF NORTH MIAMI BEACH, FLORIDA BRIEF IN OPPOSITION

SIDNEY B. SHAPIRO,
City Attorney
with
HOWARD B. LENARD
City of North Miami Beach
17011 N.E. 19th Avenue
North Miami Beach, Florida 33162
(305) 947-7581
Attorneys for Respondent
City of North Miami Beach, Florida

in the

Supreme Court

of the

United States

OCTOBER TERM, 1978

NO. 78-1540

GLENN M. GREENWALD,

Petitioner,

vs.

THE CITY OF
NORTH MIAMI BEACH, FLORIDA and
THE UNITED STATES
DEPARTMENT OF LABOR,

Respondents.

Petition For A Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit

---

RESPONDENT CITY OF NORTH MIAMI BEACH, FLORIDA BRIEF IN OPPOSITION

The Respondents, through their counsel, Sidney B. Shapiro and Howard B. Lenard, City Attorney's Office, City of North Miami Beach, Florida, respectfully request that this Court deny the Petition for a Writ of Certiorari, seeking review of the Fifth Circuit's Per Curiam opinion in this case. That opinion is recorded at 587 F. 2d 779 (1979) and is reproduced as Appendix A.

STATEMENT OF FACTS

Petitioner Glenn Greenwald was terminated from his job with the City of North Miami Beach on August 26, 1977. Greenwald then filed an appeal of the City Manager's decision to the local Civil Service Board. Petitioner's statement of facts does not completely comport with the record below. Petitioner characterizes the wholly independent, local Civil Service Board as a State body, (Petitioner's Writ, Page 8). The local Civil Service Board derives its character from the City of North Miami Beach's Charter and is independent to and in no manner precludes other remedies available to any employee of the City of North Miami Beach.

On December 1, 1977, after attorneys representing Petitioner had the opportunity to present evidence, cross examine witnesses and test all evidence, the Civil Service Board upheld the action of the City Manager in discharging Greenwald. Petitioner had access to legal counsel from the point of termination throughout all stages of litigation. On December 21, 1977, approximately one hundred fifteen (115) days after being dismissed by the City Manager, Greenwald filed his complaint under the Safe Drinking Water Act with the Secretary of Labor.

The Safe Drinking Water Act has a thirty (30) day statute of limitations which is a jurisdictional requirement.

QUESTIONS PRESENTED

1. Where a Federal Remedy is supplementary and concurrent to the remedies provided by the Charter of the City of North Miami Beach, and where the latter need not be first sought and refused before the Federal Remedy can be invoked, does utilization of the local remedy toll the running of the Federal Remedy?

2. Is the statutory period for filing a Federal Discrimination claim tolled during the pursuit of independent remedies?

3. Can equitable principles be invoked to toll the statute of limitations when these principles are not applicable to the present case?

REASONS WHY THE WRIT SHOULD BE DENIED

Petitioner's claim of discrimination allegedly arises under the Federal Safe Drinking Water Act (SDWA), 42 U.S.C. §300f *et seq.* That act makes it a violation for an employee to be discharged because he ". . . participated . . . in any . . . action to carry out the purposes of the SDWA", 42 U.S.C. §300j-9(i). The Act then creates a Federal cause of action in favor of "[A]ny employee who believes that he has been discharged . . . in violation of the SDWA," *id.* To avail himself of the statutory cause of action an employee is required by the Act to file a complaint with the Secretary of Labor

"[W]ithin thirty (30) days after such violation (i.e. the alleged discriminatory discharge) occurs," *id.* The Act then specifies the details of the administrative hearing within the Department of Labor, final order by the Secretary, and the employee's right to appeal an adverse ruling to the United States Court of Appeals.

The Safe Drinking Water Act contains no prerequisite or exhaustion requirement to a claimant's right to file a discrimination claim. There is no requirement to first exhaust all other possible actions he may have, whether it be in tort, contract or via Civil Service.

Conspicuously absent from Petitioner's brief is this Court's decision in *International Union of Electrical Workers, Local 790 vs. Robins & Myers, Inc.*, 429 U.S. 229 (1976). There is no need for the Supreme Court to retreat from that recently adopted position that an employee's right to appeal his dismissal under local Civil Service procedures is completely independent of his claim of discrimination arising under Federal Statutes.[1] Further, where a Federal discrimination claim is independent of other remedies, the statutory period for invoking it will not be tolled while the other remedies are pursued. See *Johnson vs. Railway Express Agency, Inc.*, 421 U.S. 454 (1975).

In the petition filed herein, no substantial issues are raised to warrant review by this Court. In numerous

[1]The Courts of Florida have recently addressed a similar question presented herein. See *Board of Commissioners of the Lower Florida Keys Hospital District vs. Lowery*, 362 So.2d 287, (3rd Fla. App. 1978).

decisions by this Court the issue which petitioner attempts to raise have been addressed and the rules articulated in several recent Supreme Court cases.

The Supreme Court unanimously ruled in *Alexander vs. Gardner-Denver Company*, 415 U.S. 36 (1974), that a discharged employee's Federal discrimination claim (under Title VII) is wholly independent of other remedies, that Title VII was intended by Congress "[T]o supplement, rather than supplant, existing laws and independent institutions relating to employment discrimination." 415 U.S. 36, 48-49 (1974).

The Supreme Court has refused to permit the tolling of the Statute of Limitations in two (2) recent cases very similar to the present one. Each was a suit by a discharged employee claiming discrimination under a Federally created cause of action. In *Johnson vs. Railway Express Agency, Inc.*, 421 U.S. 454 (1975), this Court held that the Statute of Limitations governing suits under 42 U.S.C. 1981 would not be tolled while the employee pursued remedies under Title VII, 42 U.S.C. §2000e. In *International Union of Electrical Workers, Local 790 vs. Robins & Myers, Inc.*, 429 U.S. 229 (1976), this Court held that the ninety (90) day statutory period for filing a complaint under Title VII would not be tolled while the employee pursued grievance procedures under a collective bargaining agreement.

Both decisions relied heavily on the reasoning in *Alexander*, supra, that a Federal discrimination claim is independent of all other remedies. Each decision by this Court held that the statute of limitations would run from the date of the alleged discriminatory act, namely,

the date the employee was fired. The cases show that the discrimination claim would not be tolled during pursuit of an independent remedy whether the remedy is statutory as in *Johnson,* supra, or based on the employment contract as in *International Union,* supra. After these cases, it cannot be contended that there is confusion and conflict by and between the circuits.

The fact that Congress established a thirty (30) day time limit on discrimination actions under the SDWA — a limit both specific and unambiguous — prevents a Court or Administrative Agency from entertaining untimely claims. A limitation on bringing an action expressed by Congress in the same Act that created the cause of action, operates as more than merely a general statute of limitations. It defines the cause of action itself and it limits the jurisdiction of the Court to hear the action. The principle was stated in *The Harrisburg,* 119 U.S. 199, 214 (1886): "[W]here statutes create a new liability . . . the time within which the suit must be brought operates as a limitation of the liability itself as created and not of the remedy alone." See *Guy vs. Robins & Myers, Inc.,* 525 F.2d 124 (6th Cir. 1975); *International Union of Electrical Workers, Local 790 vs. Robins & Myers, Inc.,* 429 U.S. 229 (1976).

The Supreme Court has ruled with respect to a Title VII discrimination claim that when the statute specifies with precision the jurisdictional prerequisites that an individual must satisfy before he is entitled to institute a lawsuit, then Congress has spoken with respect to what it considers an acceptable delay. See *Alexander,* supra. p. 47 and *International Union,* supra. p. 240. The same considerations apply to the thirty (30) day period for bringing actions under the SDWA.

The Fifth Circuit Court of Appeals in its decisions has applied standards as established by this Court. Petitioner attempts to raise several cases which are allegedly in conflict with the Fifth Circuit's ruling but which, in reality, are not.

No conflict exists between the other Circuits and the Fifth Circuit of Appeals when the latter applied the articulated standards of the United States Supreme Court. Some Courts have found compelling reasons for tolling a statute of limitations and have cited the broad language in *Burnett vs. New York Central Railroad,* 380 U.S. 424, 428 (1965), that the policy behind such statutes is "[F]requently outweighed. . .where the interests of justice required vindication of the Plaintiff's rights." The Fifth Circuit in rendering its per curiam opinion was applying the standard articulated by this Court in *International Union of Electrical Workers, Local 790 vs. Robins & Myers, Inc.,* 429 U.S. 229 (1976). The language of *Burnett,* supra, is greatly curtailed by the Supreme Court's opinion in *International Union,* 429 U.S. 237-38, where this Court emphasized the special facts of the *Burnett* case. In *Burnett* the statute was tolled because the Plaintiff had filed the same statutory claim in a different form, but the claim was dismissed for improper venue. In the present case as in

International Union, supra, the Plaintiff had filed a completely different independent claim.[2]

Furthermore, *Burnett,* involved a state's general statute of limitations while the present case and *International Union,* supra, involved a specific limitation written by Congress into the statute creating the cause of action.

Finally, cases cited in Petitioner's Writ of Certiorari are either stale, clearly distinguishable on their facts, or have been addressed by Supreme Court Mandate. The instant case is not in conflict with prior Supreme Court rulings and therefore no need exists to further explore the Fifth Circuit Court of Appeals' ruling.

---

[2]Basically, Federal Discrimination Statutes are designed to provide independent remedies where past history reflected to gap to discriminatory wrongs. These causes are designed to primarily bring actions against the violating governmental entities. In light of the doctrine of Sovereign Immunity, Congress creates jurisdiction with limited time periods to bring an action against a governmental entity. These filing periods are a safeguard to a governmental entity such as a city from unlimited liability. In the case *sub judice,* in the unlikely event that Petitioner would prevail, his remedy would be payment of back wages. So, in this case, the petitioner's delay in filing his Federal claim would allow him to unilaterally increase his own damages. Petitioner's untimely filing would create an undue hardship on Respondent City of North Miami Beach and in essence any entertainment of Petitioner's claim would create a judicial wedge to closing the door on untimely and improper claims for relief.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

SIDNEY B. SHAPIRO,
City Attorney
with
HOWARD B. LENARD
Attorneys for Respondent
City of North Miami Beach
17011 N.E. 19th Avenue
North Miami Beach, Florida 33162

APPENDIX

APPENDIX A

Glenn M. Greenwald, Petitioner,

v.

The City of
North Miami Beach, Florida,
and the United States
Department of Labor, Respondents.

No. 78-1945

Summary Calendar.

UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT

January 12, 1979

City employee who was discharged petitioned for review of action of Secretary of Labor in dismissing his complaint alleging that the had been discharged in violation of the Safe Drinking Water Act. The Court of Appeals held that city employee's complaint which was filed 115 days after alleged improper discharge although only 20 days after local civil service board upheld employee's termination was untimely.

Petition dismissed.

1. Labor Relations

City employee's complaint alleging a discharge in violation of Safe Drinking Water Act, which complaint

was filed with Secretary of Labor 115 days after alleged improper discharge although only 20 days after local civil service board upheld employee's termination, was untimely. Safe Drinking Water Act, §§1401-1450, 1450(i) (1,2), 42 U.S.C.A. §§300f to 300j-9, 300j-9(i) (1,2); Safe Drinking Water Amendments of 1977, §11(b), 42 U.S.C.A. §300j-10.

2. Labor Relations

Safe Drinking Water Act does not require exhaustion of state or local remedies prior to filing of complaint with the Secretary of Labor. Safe Drinking Water Act, §§1401-1450, 1450(i) (1,2), 42 U.S.C.A. §§300f to 300j-9, 300j-9(i) (1,2); Safe Drinking Water Amendments of 1977, §11(b), 42 U.S.C.A. §300j-10.

3. Labor Relations

Remedy provided by Safe Drinking Water Act is entirely independent of any local remedies. Safe Drinking Water Act, §§1401-1450, 1450(i)(1, 2), 42 U.S.C.A. §§300f to 300j-9, 300j-9(i)(1, 2); Safe Drinking Water Amendments of 1977, §11(b), 42 U.S.C.A. §300j-10.

4. Labor Relations

Fact that city employee allegedly discharged in violation of Safe Drinking Water Act sought local civil service board review of his discharge did not toll 30-day time limitation for filing claim under Act with Secretary of Labor. Safe Drinking Water Act, §§1401-1450, 1450(i)(1, 2), 42 U.S.C.A. §§300f to 300j-9, 300j-9(i)(1, 2); Safe Drinking Water Amendments of 1977, §11(b), 42 U.S.C.A. §300j-10.

Leopold & Leopold, Karen Leopold, Maurice Rosen, North Miami Beach, Fla., for petitioner.

Carin A. Clauss, Sol. of Labor, U.S. Dept. of Labor, Barbara A. Babcock, Asst. Atty. Gen., Michael F. Hertz, Thomas G. Wilson, Attys., App. Section, Civil Div., Dept. of Justice, Washington, D.C., Howard B. Lenard, Deputy City Aty., Sidney B. Shapiro, City Atty., N. Miami Beach, Fla., for respondents.

Petition for Review of a Decision of the Secretary of Labor Under the Safe Drinking Water Act.

Before BROWN, *Chief Judge,* COLEMAN and VANCE, *Circuit Judges.*

PER CURIAM.

The crucial issue in this case is whether or not the petitioner, Glenn M. Greenwald, timely filed his complaint with reference to his discharge as an employee of the City of North Miami Beach, in which he alleged that he had been discharged in violation of the Safe Drinking Water Act (the Act), 42 U.S.C. §§300f to 300j-10.[1]

---

[1]Section 1450(i) of the Act, 42 U.S.C. §300j-9(i)(1) provides:

> No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has —
>
> (A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this subchapter or a proceeding for the administration or en-

The Administrative Law Judge held that the complaint had not been filed within the time required by law. The Secretary of Labor agreed and dismissed the complaint. Mr. Greenwald petitioned this Court for review.

We agree with the findings of fact and conclusions of law of the Administrative Law Judge, as affirmed by the Secretary, and dismiss the petition for review.

The Act provides that any employee who believes that he has been discharged in violation of the Act may file a complaint with the Secretary of Labor within 30 days after the violation occurs.[2] In this case, Mr.

forcement of drinking water regulations or underground injection control programs of a State,

(B) testified or is about to testify in any such proceeding, or

(C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this subchapter.

[2]42 U.S.C. §300j-9(i)(2) provides as follows:

(2)(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(B)(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation

of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this paragraph. Within 90 days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

Greenwald was discharged on August 26, 1977, but did not file a complaint with the Secretary of Labor until 115 days later, on December 21, 1977. To be sure, this was only 20 days after the local Civil Service Board upheld the action of the City Manager in terminating Greenwald's employment. But the Act does not require the exhaustion of state or local remedies prior to the filing of a complaint with the Secretary. Moreover, the remedy provided by the Act is entirely independent of any local remedies. Thus, the fact that Greenwald sought local Civil Service Board review of his discharge did not toll the 30-day time limitation for filing a claim under the Act. *See also International Union of Electrical, Radio & Machine Workers v. Robbins & Myers, Inc.*, 1976, 429 U.S. 229, 97 S.Ct. 441, 50 L.Ed.2d 427 (pursuit of collective bargaining grievance procedures does not toll running of the limitations period within which complaint of racial discrimination must be filed with the EEOC, as Title VI remedies are independent of other pre-existing remedies available to an aggrieved employee).

PETITION DISMISSED.